

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LOCALS 302 AND 612 OF THE	)	
INTERNATIONAL UNION OF	)	
OPERATING ENGINEERS	)	CASE NO. C10-1521-MAT
CONSTRUCTION INDUSTRY HEALTH	)	
AND SECURITY FUND, et al.,	)	
	)	
Plaintiffs,	)	ORDER GRANTING
	)	PLAINTIFFS' MOTION FOR
v.	)	SUMMARY JUDGMENT
	)	
ACE PAVING CO., INC.,	)	
	)	
Defendant.	)	
_____	)	

Plaintiffs – Locals 302 and 612 of the International Union of Operating Engineers-  
Construction Industry Health & Security Fund, Locals 302 and 612 of the International Union  
of Operating Engineers-Employers Construction Industry Retirement Fund, Western  
Washington Operating Engineers-Employers Training Trust Fund (hereinafter collectively  
“Trust Funds”), and Local 302 of the International Union of Operating Engineers – move the  
Court for summary judgment against defendant Ace Paving Co., Inc. (Dkt. 6.) This matter  
was brought pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et

01 seq. (“ERISA”), and Section 301 of the Labor Management Relations Act (“LMRA”), 29  
02 U.S.C. § 185.

03 Defendant is bound by a collective bargaining agreement with Local 302 and by three  
04 different trust agreements with the Trust Funds. (Dkt. 7, ¶¶ 8, 10 and Exs. A-E.) Through  
05 those agreements, defendant is required to report and pay to the Trust Funds monthly  
06 contributions for eligible employees. (*Id.*) The trust agreements contain terms as to damages  
07 owed as a result of any delinquent contributions, as well as attorney’s fees and costs. (*Id.*, Exs.  
08 C-E.) The collective bargaining agreement also requires the payment of union dues and Union  
09 Programs (UP) contributions. (*Id.*, ¶¶ 3, 14-16 and Ex. B, App. 1, Sched. “A”, Fringe Benefits,  
10 and Sched. “B”, Fringe Benefits, §§ 8 and 9.)

11 Plaintiffs now seek delinquent contributions and dues and associated damages,  
12 attorney’s fees, and costs for July 2010 through October 2010. They attach remittance reports  
13 from defendant for the months in question and a spreadsheet showing the amounts owed, due  
14 dates, and calculations of liquidated damages, interest, attorney’s fees, and costs. (*Id.*, Exs. F-J.)

15 In its answer to plaintiffs’ complaint, defendant acknowledged the existence of the  
16 agreements requiring its payment of monthly trust fund contributions, but otherwise denied  
17 plaintiffs’ allegations or asserted that the complaint raised mixed questions of law and fact  
18 requiring no answer. (Dkt. 5.) Defendant did not oppose plaintiffs’ motion for summary  
19 judgment. The Court deems defendant’s failure to oppose to be an admission that the motion  
20 has merit. *See* Local Civil Rule 7(b)(2). The Court also, for the reasons described below,  
21 finds plaintiffs entitled to summary judgment.

22 Summary judgment is appropriate when “the pleadings, depositions, answers to

01 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
02 genuine issue as to any material fact and that the moving party is entitled to a judgment as a  
03 matter of law.” Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).  
04 The moving party is entitled to judgment as a matter of law when the nonmoving party fails to  
05 make a sufficient showing on an essential element of his case with respect to which he has the  
06 burden of proof. *See Celotex*, 477 U.S. at 322-23.

07 ERISA obligates participating employers to make contributions to a multi-employer  
08 trust fund in accordance with the contract and trust agreement. ERISA Section 515, 29 U.S.C.  
09 § 1145. ERISA provides specific mandatory remedies for delinquent contributions, including,  
10 in addition to the unpaid contributions, liquidated damages, interest, attorney’s fees, and costs.  
11 § 1132(g)(2). As noted, defendant also signed trust agreements containing terms as to  
12 damages owed as a result of delinquent contributions.

13 Section 301 of the LMRA creates a cause of action “for violation of contracts between  
14 an employer and a labor organization representing employees in an industry affecting  
15 commerce[.]” 29 U.S.C. § 185(a). Jurisdiction extends to breach of contract “actions to  
16 recover fringe benefits stemming from collective bargaining agreements.” *Local 159 v.*  
17 *Nor-Cal Plumbing, Inc.*, 185 F.3d 978, 984 (9th Cir. 1999).

18 In this case, using defendant’s remittance reports, plaintiffs calculate total trust fund  
19 contributions owed in the amount of \$267,132.39 and union dues and UP contributions in the  
20 amount of \$17,924.78 for the period of July 2010 through October 2010. (Dkt. 7, ¶ 24 and Ex.  
21 J.) Plaintiff further calculates that defendant is obligated to pay liquidated damages in the  
22 amount of \$32,055.89, pre-judgment interest, through November 19, 2010, in the amount of

01 \$4,143.02, \$1,740.00 in attorney's fees, and \$459.70 in costs. (*Id.*, ¶ 24 and Ex. J and Dkt. 8,  
02 ¶¶ 2, 4 and Ex. A.)

03       The Court finds no issues of fact regarding either the enforceability of the collective  
04 bargaining and trust agreements at issue in this case or plaintiffs' entitlement to the total amount  
05 of delinquent trust fund contributions, union dues and UP contributions, liquidated damages,  
06 interest, attorney's fees, and costs sought. Accordingly, plaintiffs' motion for summary  
07 judgment is hereby GRANTED and plaintiffs awarded the delinquent contributions and dues  
08 requested. Plaintiffs are also entitled to liquidated damages, interest, attorney's fees, and  
09 costs, as outlined above. However, because plaintiffs calculated the amounts described above  
10 as of November 2010, a revised accounting may now be in order. Accordingly, plaintiffs shall  
11 submit such information within **ten (10) days** of the date of this Order.

12       DATED this 10th day of February, 2011.

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15       Mary Alice Theiler  
16       United States Magistrate Judge  
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